Editor's note: Reconsideration denied by Order dated Oct. 12, 1984

KIM C. EVANS

IBLA 84-379 Decided September 6, 1984

Appeal from decision of the Eastern States Office, Bureau of Land Management, rejecting appellant's color-of-title application ES-31899.

Affirmed.

1. Color or Claim of Title: Generally -- Color or Claim of Title: Applications -- Color or Claim of Title: Good Faith

   An application for a class 1 color-of-title claim requires that the land has been held in good faith, and in peaceful, adverse possession by the claimant or her predecessors in title. Good faith requires that the claimant and her predecessors honestly believe that they were invested with title.

2. Color or Claim of Title: Generally -- Color or Claim of Title: Applications

   An application for a class 1 color-of-title claim requires that the land be held in good faith for at least 20 years by the claimant or her predecessors in title. If a predecessor in title held the land in good faith, then her time may be tacked onto that of the claimant. A claimant may not rely on the good faith possession of remote predecessors despite the bad faith of her immediate predecessors. Once the chain of good faith possession is broken, it must begin anew.

3. Color or Claim of Title: Generally -- Color or Claim of Title: Applications

   The obligation of proving a valid color-of-title claim is upon the claimant. A claimant's failure to carry the burden of proof on one of the elements is fatal to the application.

4. Administrative Procedure: Hearings -- Appeals -- Evidence: Sufficiency -- Hearings -- Rules of Practice: Hearings

A hearing is not necessary in the absence of a material issue of fact, which, if proven, would alter the disposition of the matter. An oral hearing on a color-of-title application will be denied where there are no allegations of fact which would establish the color-of-title claim.

APPEARANCES: David M. Andrews, Esq., Fort Myers, Florida, for appellant; Kenneth E. Lee, Esq., Assistant Solicitor, U.S. Department of the Interior, Alexandria, Virginia, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Kim Crawford Evans has appealed from a decision of the Eastern States Office, Bureau of Land Management (BLM), dated February 2, 1984, rejecting her color-of-title application ES-31899.

BLM's rejection of appellant's color-of-title application was premised on two bases: (1) appellant's acquisition and possession of the subject land was not in good faith, and (2) appellant failed to hold the land in good faith for the required 20-year period. Appellant argues on appeal that BLM erred and, therefore, should be reversed since she met the requisite 20-year period through tacking the good faith possession of a predecessor in title. The Solicitor filed an answer contending that there was a lack of good faith possession for the 20-year period.

Appellant submitted a color-of-title application to BLM to purchase tract 37, T. 44 S., R. 22 E. (comprising 10.30 acres), and tract 37, T. 44 S., R. 23 E. (comprising 28.49 acres), Tallahassee Meridian, Florida. Appellant made application pursuant to class 1 1/ of the Color of Title Act, as amended, 43 U.S.C. § 1068 (1982).

Appellant's grandmother, Hortense S. McConnell, held the lands until her death. On June 25, 1979, the lands passed by will to the Lee County Bank as trustee. On April 29, 1980, the bank conveyed a 25-percent interest in the property, as per the terms of the will, to appellant, who is one of four heirs. On June 21, 1982, appellant acquired the interest of the other heirs, giving her full title to the subject lands. On her application, appellant states that she learned of the title defect in "approximately 1972" from her grandmother. How long her grandmother had known that prior to 1972 is not reflected by the record.

1/ The applicable regulation, 43 CFR 2540.0-5(b), provides in part:
"A claim of class 1 is one which has been held in good faith and in peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years, on which valuable improvements have been placed, or on which part of the land has been reduced to cultivation * * *. A claim is not held in good faith where held with knowledge that the land is owned by the United States."

[1] The Color of Title Act, 43 U.S.C. § 1068 (1982), provides in part:

> The Secretary of the Interior (a) shall, whenever it shall be shown to his satisfaction that a tract of public land has been held in good faith and in peaceful, adverse, possession by a claimant, his ancestors or grantors, under claim or color of title for more than twenty years, and that valuable improvements have been placed on such land or some part thereof has been reduced to cultivation * * * issue a patent for not to exceed one hundred and sixty acres of such land * * *. [Emphasis added.]

An essential element of a color-of-title claim is the good faith requirement. Lawrence E. Willmorth, 64 IBLA 159, 160 (1982). Good faith under the Color of Title Act requires that claimant and her predecessors honestly believe that they were invested with title. E.g., Hal H. Memmott, 77 IBLA 399, 403 (1983); Carmen M. Warren, 69 IBLA 347, 350 (1982); Lawrence E. Willmorth, supra. In order to determine whether the claimant honestly believed that she was seised with title, the Department may consider whether such belief was unreasonable in light of the facts then actually known to her. E.g., Hal H. Memmott, supra; Carmen M. Warren, supra; Minnie E. Wharton, 4 IBLA 287, 295-96, 79 I.D. 6, 10 (1972), rev'd on other grounds, United States v. Wharton, 514 F.2d 406 (9th Cir. 1975).

If appellant knew at the time of the conveyance to her and when she acquired the interests of the other heirs that she was not acquiring title, then she is barred from relief under the Color of Title Act. Jacob Dykstra, 2 IBLA 177, 180 (1971). Knowledge of Federal ownership of the land in question negates the requisite good faith. 43 CFR 2540.0-5(b); United States v. Wharton, supra at 408; Day v. Hickel, 481 F.2d 473, 476 (9th Cir. 1973).

Appellant's color-of-title application clearly reveals that she learned of the title defect in "approximately 1972" from her grandmother. Therefore, she could not honestly believe that she was invested with title when she acquired her interests in the land. E.g., Hal H. Memmott, supra at 403. This certainly indicates her lack of good faith. "[T]here can be no such thing as good faith in an adverse holding, where the party knows he has no title, and that, under the law, which he is presumed to know, he can acquire none by his occupation." Deffeback v. Hawke, 115 U.S. 392, 407 (1885), cited in Purvis v. Vickers, 67 I.D. 110 (1960).

In her statement of reasons, appellant attempts to draw a distinction between one who acquires by gift or bequest and one who acquires by purchase. Appellant implicitly contends that if her grandmother would have been entitled to a conveyance under the Act, she, as her grandmother's heir, is also entitled to the conveyance. The logical conclusion of appellant's contention is that one who takes by devise could qualify under the Color of Title Act, despite both the lack of good faith of the predecessor in interest and knowledge by the devisee that the testator did not hold clear title to the land.

Neither logic nor precedent supports appellant's suggested distinction. In Bryan N. Johnson, 15 IBLA 19 (1974), the appellant applied for land under the Color of Title Act alleging settlement dating back to 1907. Appellant's predecessor in interest had filed a notice of location as a homestead settlement on the lands in 1953, but died, leaving all his property to the appellant. Although the basis for rejection of appellant's color-of-title

application rested in part on the fact that such a devise was inadequate to constitute color-of-title to a specific tract of Federal land, the Board also noted that "[a]ppellant's predecessor in interest recognized the Federal title by filing the notice of location. Hence, there was no good faith adverse holding for 20 years." Id. at 22.

The circumstances in Bryan N. Johnson, supra, are similar to the instant case. Here, appellant's predecessor in interest also held the land for a number of years before acknowledging the title of the United States. Having acquired this knowledge, she then failed to exercise her right to apply under the Act.

Even if the distinction between a devise and purchase were to be accepted by the Board, appellant received only a 25-percent interest through the will. She acquired the remaining 75-percent interest from the other heirs. This represents precisely the "affirmative" acquisition denied by appellant in her appeal. The other heirs deeded their interest with knowledge that they had no title to convey. Therefore, we conclude that appellant's lack of good faith is a proper basis for rejecting her color-of-title application.

[2] Even if appellant's acquisition and possession were in good faith, appellant must still meet the statutorily required 20-year period of good faith possession. See 43 U.S.C. § 1068 (1982); 43 CFR 2540.0-5(b). A claimant must establish a 20-year period of good faith possession under claim or color of title immediately prior to the time that the claimant learned of the title defect. Lawrence E. Willmorth, supra at 160. See Mable M. Farlow, 30 IBLA 320, 84 I.D. 276 (1977); Jacob Dykstra, supra at 181.

Appellant contends that she can establish the requisite 20-year period by "tacking." 2/ A claimant may tack onto his own possession a period when the land was possessed by his predecessors in title, but if this is done, their good faith must also be established. Lawrence E. Willmorth, supra at 160; Mable M. Farlow, supra at 330. However, if the predecessors in title did not hold in good faith, the chain has been broken. Therefore, the holding period of the predecessor in title could not be tacked on, and the statutory period begins anew. Hal H. Memmott, supra at 403; Jacob Dykstra, supra at 181. "If any predecessor knew of the defect, the 20 years must be established after he divested himself of the land." Mable M. Farlow, supra at 300. See Bryan N. Johnson, supra at 22.

In the instant case, it is clear that appellant herself does not meet the requisite 20-year period. Therefore, the issue is whether appellant may tack her grandmother's holding period on to her own in order to fulfill the 20-year requirement. Even though 20 years of good faith possession may have

2/ The doctrine of "tacking" permits an adverse possessor to add his period of possession to that of a prior adverse possessor in order to establish a continuous claim for the statutory period. Thus, it is not necessary that an adverse possession be maintained for the entire statutory period by one person. See Joe I. Sanchez, 32 IBLA 228, 232 (1977); 3 Am. Jur. 2d Adverse Possession § 58 (1962); 5 Thompson On Real Property § 2551 (1957); 3 American Law of Property § 15.10 (1952).

elapsed prior to 1972, her grandmother's knowledge of the defective title breaks the chain, which begins to run anew at the time she was divested of the land. Since appellant's grandmother knew of the defect, the 20 years must be established after she was divested of the land. Mable M. Farlow, supra at 300. Appellant may not rely on any good faith possession of remote predecessors in her chain of title despite the bad faith of her immediate predecessor. Jacob Dykstra, supra at 181. Appellant is unable to meet the 20-year period herself, or through tacking. Therefore, we conclude that appellant's failure to establish the required 20-year period of good faith possession is a proper basis for rejecting her color-of-title application.

[3] Appellant also contends that BLM failed to show that appellant's ancestors did not hold in good faith for 20 years. However, appellant has misplaced the burden of proof. The obligation for proving a valid color-of-title claim is upon the claimant. 43 U.S.C. § 1068 (1982); Carmen M. Warren, supra at 350; Mable M. Farlow, supra at 331. A claimant's failure to carry the burden of proof with respect to one of the elements is fatal to the application. Corrine M. Vigil, 74 IBLA 111, 112 (1983). Since appellant has failed to carry her burden of proof, we conclude that the rejection of her color-of-title application was proper.

[4] Appellant requested an oral hearing on this appeal pursuant to 43 CFR 4.109. However, appellant has not alleged any disputed issue of material fact. A hearing is not necessary in the absence of a material issue of fact, which if proven, would alter the disposition of the appeal. Stickelman v. United States, 563 F.2d 413, 417 (9th Cir. 1977); United States v. Consolidated Mines & Smelting Co., 455 F.2d 432, 453 (9th Cir. 1971); Alumina Development Corporation of Utah, 77 IBLA 366, 371 (1983); Patricia C. Alker, 70 IBLA 211, 213 (1983). This Board "should grant a hearing when there are significant factual or legal issues remaining to be decided and the record without a hearing would be insufficient for resolving them." Stickelman v. United States, supra at 417. Here, the record does not reflect any significant factual or legal issues which warrant an oral hearing. In Bernard R. Snyder, 70 IBLA 207, 209 (1983), this Board denied a request for an oral hearing on a color-of-title application because there were no allegations of fact which would establish the color-of-title claim. The same considerations control the instant case, and we therefore deny appellant's request for an oral hearing.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative Judge

James L. Burski
Administrative Judge.